

The Ohio Turnpike Act*

The 98th General Assembly has created the Ohio Turnpike Commission and has given the commission powers and duties which contemplate the construction and operation of limited-access freeways, super-highways, or turnpikes, in Ohio.¹ The kind of construction made possible by the Turnpike Act is similar to that of the Pennsylvania Turnpike,² including center divisions, wide shoulders, long sight distances, multiple lanes in each direction and grade separations at intersections with other highways and railroads. Ohio turnpike projects would be self-liquidating toll roads financed by revenue bonds.

The commission consists of four members appointed by the Governor with the advice and consent of the Senate, no more than two of whom may be members of the same political party, and the director of highways who is a member *ex officio*. The appointive members must have been resident electors for five years preceding appointment. They have been appointed originally to serve in office until July 1, 1951, 1953, 1955, and 1957 and thereafter to serve in office for terms of eight years. The appointed members of the commission receive a salary of \$5,000 a year plus actual expenses necessarily incurred. The commission will elect a chairman and a vice chairman from the membership and a secretary-treasurer who need not be a member of the commission. Three members shall constitute a quorum and the affirmative vote of three members is necessary to take action.

The new law provides that "The governor may at any time remove any member of the commission for misfeasance, nonfeasance, or malfeasance in office."³ It seems likely that the removal of a commissioner could be effected only upon complaint and hearing as required by the Constitution in cases of removal of officers, as distinguished from employees.⁴ The Ohio Supreme Court has set the criteria for making this distinction, and these criteria indicate that

* Amended Senate Bill No. 7, effective September 1, 1949. This act will become Ohio General Code Sections 1201 to 1222, both inclusive.

¹ This act is very similar to bills which were introduced in the 97th General Assembly in 1947. They were Senate Bill No. 22 and Substitute Senate Bill No. 22, 97th General Assembly, 1947-48. It is to be borne in mind that, unlike an ordinary highway, a freeway is not subject to access rights for the benefit of abutting property.

² The Pennsylvania Turnpike Commission was created by an act similar in many respects to the Ohio act. See PA. STAT. ANN. tit. 36, §652 *a et seq.* (1942). Compare N. Y. PUBLIC AUTHORITIES LAW §275 *et seq.*

³ OHIO GEN. CODE §1203; Am. Sen. Bill No. 7, §3.

⁴ OHIO CONST. Art. II, §38; State *ex rel.* Hoel v. Brown, 105 Ohio St. 479, 138 N.E. 230 (1922).

turnpike commissioners would be within the constitutional protection.⁵

The commission is made a body corporate and politic, which may sue and be sued, plead and be impleaded. The act declares that the exercise by the commission of its powers shall be held to be essential governmental functions.⁶ This is consistent with the exemption from taxation of the property and income of the commission, which is provided in another section.⁷ In order to avoid entanglement with the old governmental-proprietary distinction employed in tort cases, the act then provides that the commission shall not be immune from liability by reason of its exercising governmental functions.⁸

Section 5 of the act gives the commission certain enumerated powers, among which is the power to maintain a principal office and sub-offices. There follows a provision that all actions against the commission shall be brought in the common pleas court of the county in which the principal office is located or in which the cause of action arose if it arose in Ohio.⁹ All summonses, exceptions and notices of every kind must be served by leaving a copy at the principal office with the person in charge or with the secretary-treasurer.¹⁰

The commission is given the authority to employ attorneys, accountants, engineers, superintendents, and other personnel, and to fix their compensation.¹¹ Whenever any contract or agreement, other than those for personal services, involves an expenditure of more than \$1,000, there must be competitive bidding and a written contract with the lowest and best bidder.¹²

The commission shall have the power to exercise the right of eminent domain to acquire in the name of the state such property as is deemed necessary to the accomplishment of the purposes of the act. There are some minor restrictions upon the authority to enter lands of railroads, but in general the commission and its agents and employees may enter any lands, waters or premises to make surveys, soundings, drillings and examinations. Such entries

⁵ State *ex rel.* Newman v. Skinner, 128 Ohio St. 325, 191 N. E. 127 (1934).

⁶ OHIO GEN. CODE §1203; Am. Sen. Bill No. 7, §3.

⁷ OHIO GEN. CODE §1212; Am. Sen. Bill No. 7, §12.

⁸ OHIO GEN. CODE §1203; Am. Sen. Bill No. 7, §3.

⁹ OHIO GEN. CODE §1205 (d); Am. Sen. Bill No. 7, §5 (d).

¹⁰ *Ibid.*

¹¹ OHIO GEN. CODE §1205 (1); Am. Sen. Bill No. 7, §5 (1). The commission is authorized to provide coverage for its employees under the Workmen's Compensation Act and the Ohio Unemployment Compensation Act. OHIO GEN. CODE §1205 (n); Am. Sen. Bill No. 7, §5 (n).

¹² OHIO GEN. CODE §1205 (k); Am. Sen. Bill No. 7, §5 (k).

are declared not to be trespasses; the commission is liable for actual damage resulting to property from such activities.¹³ The act provides that the power of condemnation shall extend to public lands ". . . including public parks, playgrounds or reservations" ¹⁴ This constitutes a legislative determination that the turnpike is a "higher" use than those named, but it leaves for the courts other questions which may be raised.¹⁵

The commission may petition to the common pleas court for the vacation or relocation of public roads, in the manner now provided for inhabitants of a township. The commission shall pay the cost of the relocation or reconstruction of roads or public utility facilities, as part of the cost of a turnpike project.

The "cost" of turnpike projects is defined comprehensively in the act.¹⁶ This term includes the cost of land, easements and rights, machinery and equipment, financing charges, the cost of demolishing buildings, of relocating roads, buildings, public utility facilities, the cost of surveys, estimates, plans, specifications, and the expenses for administration, engineering and legal work. The total cost of turnpike projects is to be financed by the sale of turnpike revenue bonds.

The act authorizes the commission to provide by resolution for the issuance of "turnpike revenue bonds of the state."¹⁷ It would have been better to have provided for issuance in the name of the commission, because the revenue bonds are clearly not intended to be obligations "of the state." The bonds will be obligations of the Turnpike Commission, a body corporate and politic; they will not be secured by a pledge of the credit of the state.¹⁸ The bonds will be payable solely from the funds pledged for their payment, i.e., the revenues¹⁹ of the commission. The bonds will carry on their face a statement that they are not obligations of the State of Ohio or of any political subdivision thereof.²⁰ It is important that no one be misled by the term "revenue bonds of the state."²¹

¹³ OHIO GEN. CODE §1206; Am. Sen. Bill No. 7, §6.

¹⁴ OHIO GEN. CODE §1205 (i); Am. Sen. Bill No. 7, §7 (i).

¹⁵ See Ball, *Intergovernmental Conflicts in Land Acquisition*, 10 OHIO ST. L. J. 30 (1949).

¹⁶ OHIO GEN. CODE §1204 (c); Am. Sen. Bill No. 7, §4 (c).

¹⁷ OHIO GEN. CODE §1209; Am. Sen. Bill No. 7, §9.

¹⁸ This is spelled out in other parts of the act. OHIO GEN. CODE §1202; Am. Sen. Bill No. 7, §2.

¹⁹ "Revenues" is defined in OHIO GEN. CODE §1204 (e); Am. Sen. Bill No. 7, §4 (e).

²⁰ OHIO GEN. CODE §1202; Am. Sen. Bill No. 7, §2.

²¹ The original bill provided that the bonds should bear the signature of the Governor or a facsimile thereof. Sen. Bill No. 7, §9, 98th General Assembly; Sub. Sen. Bill No. 22, §10, 97th Gen'l Assembly; Sen. Bill No. 22, §9, 97th

The distinction between mortgage revenue bonds and revenue bonds should be recalled. Mortgage revenue bonds are secured by a pledge of the revenues of the project and also by a lien upon the property of the enterprise. The 1949 legislature authorized municipal corporations to finance the development of off-street parking facilities through the sale of mortgage revenue bonds.²² On the other hand, turnpike projects can be financed only by the issuance of simple revenue bonds; the act expressly forbids the conveyance or mortgaging of any part of turnpike projects.²³

The Uniform Negotiable Instruments Law provides that an obligation which is not an unconditional promise to pay is not negotiable.²⁴ A promise to pay only out of a separate or special fund is ordinarily not an unconditional promise to pay.²⁵ But the legislature has declared that the turnpike revenue bonds shall have all the qualities and incidents of negotiable instruments under the Negotiable Instruments Law of Ohio.²⁶

The commission may issue bonds without the audit, supervision or approval of any other branch or department of the government.²⁷ The bonds may be registered or coupon bonds. The commission may issue refunding bonds. The maximum interest rate is 5%.

The commission shall have power to fix and revise and to charge and collect tolls for the use of the turnpike project.²⁸ It may enter a trust agreement with a bank or trust company; in such agreement it may pledge or assign the tolls or other revenues to the payment of the interest on and principal of the bonds.²⁹ The commission is authorized to award contracts for the operation of gas stations, garages, stores, hotels, restaurants and other facilities; such contracts must be awarded to the bidder who in consideration of the public interest has made the best bid.³⁰

Gen'l Assembly. The act provides that the bonds shall bear the signatures of the chairman and vice chairman of the commission or facsimiles. OHIO GEN. CODE §1209; Am. Sen. Bill No. 7, §9.

²² OHIO GEN. CODE §§3939-2, 3939-3; House Bill No. 234, effective August 12, 1949.

²³ OHIO GEN. CODE §1213; Am. Sen. Bill No. 7, §13. It is to be noted that there is not express authority to capitalize interest during the period of construction, but "project costs" might be liberally interpreted to include this item.

²⁴ OHIO GEN. CODE §8106 (1938).

²⁵ OHIO GEN. CODE §8108 (1938).

²⁶ OHIO GEN. CODE §1209; Am. Sen. Bill No. 7, §9.

²⁷ Bonds issued under authority of this act need not comply with the provisions of any other law applicable to the issuance of bonds. OHIO GEN. CODE §1221; Am. Sen. Bill No. 7, §21.

²⁸ OHIO GEN. CODE §1214; Am. Sen. Bill No. 7, §14.

²⁹ OHIO GEN. CODE §1213; Am. Sen. Bill No. 7, §13.

³⁰ OHIO GEN. CODE §1214; Am. Sen. Bill No. 7, §14.

The commission is given very broad powers in general terms to provide for the regulation of the use of turnpikes. The act gives power to the commission to make rules and regulations for the control and regulation of traffic on turnpikes. The act then provides that violations of these rules shall be misdemeanors punishable by a fine not exceeding \$50 for the first offense or \$500 for the second and further offenses. All fines collected are to be paid into the treasury of the commission.³¹ There is a further provision that the commission may police turnpikes and may employ a force of police to accomplish this purpose.³² This raises a question regarding the jurisdiction and duties of the State Highway Patrol with respect to turnpike projects. There is a provision that public police officers while in the performance of their duties may enter turnpikes without the payment of tolls.³³ The relationship of the state patrol to turnpike projects and turnpike police is not at all clear.

When all the turnpike bonds issued with respect to any project have been retired, or there are sufficient funds in trust to pay the principal and interest outstanding, such project, if in good condition and repair, shall become a part of the system of state highways. Thereafter such a project would be maintained by the highway department and would be free of tolls.³⁴

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³¹ OHIO GEN. CODE §1217; Am. Sen. Bill No. 7, §17.

³² OHIO GEN. CODE §1218; Am. Sen. Bill No. 7, §18.

³³ OHIO GEN. CODE §1217; Am. Sen. Bill No. 7, §17.

³⁴ OHIO GEN. CODE §1219; Am. Sen. Bill No. 7, §19.